

## The Payment of Bonus Act, 1965

### Learning Objectives

In this Chapter, the students will understand the-

- ◆ Applicability and non-applicability of the Act to certain classes of establishments and employees
- ◆ Computation of profits for the purpose of calculation of allocable and available surplus for the purpose of determination of bonus
- ◆ Set on and Set off of allocable surplus
- ◆ Percentage limits for minimum and maximum bonus
- ◆ Other miscellaneous provisions

### 3.1 Introduction

This is an Act intended to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. It came into force from September 25, 1965. The Payment of Bonus Act, 1965 has undergone several amendments. This Act extends to the whole of India

The Act is designed to:

- (i) impose a statutory obligation on an employer of every establishment covered by the Act to pay bonus to employees in the establishment;
- (ii) lay down principle and formula for calculation of bonus;
- (iii) provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of set-on and set-off; and
- (iv) provide machinery for enforcement of liability for payment of bonus.

### 3.2 Applicability of the Act

Unless it is provided otherwise in this Act, it shall apply to:

- (a) every *factory*; and
- (b) every other *establishment in which 20 or more persons are employed* on any day during an accounting year.

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- (c) the *appropriate Government* may also apply the provisions of this Act with effect from such accounting year as may be *notified in the official Gazette*, to any establishment or class of *establishments* [including an establishment as defined by Section 2(m) (ii) of the Factories Act, 1948] *employing persons less than 20* but not less than 10 in number [Proviso to Section 1(3)].
- (d) The provision of this Act shall also apply to certain public sector establishments [Section 20(1)].

An establishment in which 20 or more persons are employed on any day during an accounting year, must continue to be governed by this Act, inspite of the fact that the *number of persons employed therein falls below 20* [Section 1(5)].

A part-time employee is also an employee for the purpose of calculating the number of employees i.e., 20 or more under Section 1(3)(b). [*Automobile Karamchari Sangh Vs. Industrial Tribunal, (1976) 38 FLR 268(All)*]

### 3.3 Act not to apply to certain classes of Employees (Section 32)

The following are the categories of employees who are excluded from the operation of the Act:

- (i) Employees employed by the Life Insurance Corporation of India;
- (ii) Seamen as defined under Section 3(42) of the Merchant Shipping Act, 1958;
- (iii) Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;
- (iv) Employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;
- (v) Employees employed by-
  - (a) the Indian Red Cross Society or any other institution of a like nature (including its branches);
  - (b) Universities and other educational Institutions;
  - (c) Institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;
- (vi) Employees employed by the Reserve Bank of India;
- (vii) Employees employed by the financial and other institutions such as;
  - (a) the Industrial Finance Corporation of India;
  - (b) any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A, of the State Financial Corporations Act, 1951;
  - (c) the Deposit Insurance Corporation;
  - (d) the National Bank for Agriculture and Rural Development ;

- (e) the Unit Trust of India;
  - (f) the Industrial Development Bank of India;
  - (g) the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
  - (h) the National Housing Bank ;
  - (i) any other financial institution (other than a banking company) being an establishment in public sector, which the Central Government may, by notification in the Official Gazette, specify; while so specifying the Central Government shall have regard to its capital structure, its objectives and the nature of its activities and the nature and extent of financial assistance or any concession given to it by the Government and any other relevant factor;
- (viii) Employees employed by inland water transport establishment operating on routes passing through any other country.

### 3.4 Application of the Act to establishments in Public Sector in certain cases [Section 20]

In following two conditions, this Act will be applied on the public sector establishments(PSEs)-

- (i) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services ,in competition with an establishment in private sector, and
- (ii) The income from such sale or services or both is not less than twenty percent of the gross income of the establishment in public sector for that year,

then, the provisions of this Act shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector[ Sub-section(1)].

Save as otherwise provided in Sub-section (1), nothing in this Act shall apply to the employees employed by any establishment in the public sector [Sub-section (2)].

### 3.5 Definitions: (Section 2)

**Accounting year [Section 2(1)]:** It means, (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;

(ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;

(iii) in any other case- (a) the year commencing on the first day of April; or (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced.

Provided that an option once exercised by the employer under clause (iii)(b) shall not again be

exercised except with the previous permission of the prescribed authority in writing and on such terms as the authority may think to impose.

**Allocable surplus [Section 2(4)]:** Allocable surplus means:

- (i) In case where company is employer- Where a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act, 1961 for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act- there 67% of the allocable surplus in an accounting year shall be the allocable surplus,
- (ii) In any other case of employer- the allocable surplus means 60% of such available surplus.

**Appropriate Government [Section 2(5)] :** In relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 is the Central Government, the Appropriate Government means the Central Government. But in relation to any other establishment, the expression means the Government of the State in which the other establishment is situated.

**Available Surplus [Section 2(6)]:** It means the available surplus in an accounting year as defined and computed under Section 5 of the Act. Available surplus shall be the gross profit for that year after deduction of prior charges(mentioned in Section 6) and by addition of the amount equal to the difference of certain items(mentioned in section 7).

Therefore, available surplus can be calculated with the following equation:

Gross profit for the purpose of bonus – Amount of prior charges + amount equal to the differences between the amount of direct taxes on the gross profit [for the immediately preceding accounting year and of the immediate preceding accounting year after deduction of the amount of bonus which the employer has paid/liable to pay for that year( as calculated in accordance with the provisions of section 7 )] = available surplus.

**Award [Section 2(7)]:** It means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal, or National Tribunal constituted under the Industrial Disputes Act, 1947, or by any other authority constituted under any corresponding law, relating to investigation and settlement of industrial disputes in force in a state and includes an arbitration award made under Section 10A of that Act or under that law.

**Employee [Section 2(13)] :** It means any person (other than an apprentice) employed –

- (i) On a salary or wage not exceeding ₹ 10,000 per mensem in any industry,
- (ii) To do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work,
- (iii) for hire or reward,
- (iv) Under the express /implied terms of employment

**Employer [Section 2(14)]:** includes-

- (1) *In relation to an establishment which is a factory – the owner or occupier of the factory, including the agent of such owner or such occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of that factory under Section 7(1)(f) of the Factories Act, 1948, the person so named are termed as employer.*
- (2) *In relation to any other establishment which is not a factory – the person or the authority which, has the ultimate control over the affairs of the establishment and if the said affairs are entrusted to a manager, managing director, or managing agent then such manager, managing director or managing agent are termed as employer.*

**Establishment in private sector [Section 2(15)]:** This expression means any establishment other than an establishment in public Sector.

**Establishment in public Sector [Section 2(16)]:** It means an establishment owned, controlled or managed by-

- (a) a Government company as defined in Section 617 of the Companies Act, 1956;
- (b) a corporation in which not less than 40% of its capital is held (whether singly or taken together) by:
  - (i) the Government; or
  - (ii) the Reserve Bank of India; or
  - (iii) a corporation owned by the Government or the Reserve Bank of India.

**Salary or wage [Section 2(21)]:** It means- (i) all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, (ii) all remuneration which will be payable to an employee in respect of his employment or of work done, if the terms of employment, express or implied, were fulfilled, (iii) It includes dearness allowance, *i.e.*, all cash payments by whatever name called, paid to an employee on account of a rise in the cost of living.

But the term excludes:

- (i) any other allowance which the employee is for the time being entitled to;
- (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
- (iii) any travelling concession;
- (iv) any bonus (including incentive, production & attendance bonus);
- (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any *ex-gratia* payment made to him; and

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(vii) any commission payable to the employee.

It may be noted that where an employee is given, in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage for such employee.

It is also worthy to note that the words and expressions used but not defined in the Payment of Bonus Act but defined in the Industrial Disputes Act, 1947 shall have the same meanings respectively assigned to them in that Act.

#### Key Points

- ◆ The payment of Bonus Act, 1965 shall apply to every factory, and every other establishment in which 20 or more persons are employed in an accounting year, and also apply to any establishment or class of establishment employing persons less than 20 but not less than 10 in number, if notified in the official gazette.
- ◆ Salary or wage- means all remuneration (other than remuneration for overtime) in terms of money, which would, be payable to an employee in respect his employment or of work done, dearness allowance, i.e., all cash payments, all free food allowance or the value of the free food given by the employer, retaining allowance, all lay-off compensation, city compensation allowance subject to a contract to the contrary
- ◆ But the term excludes: Any other allowance which the employee is entitled to, the value of any house accommodation, any travelling concession, any bonus (including incentive production & attendance bonus), any contribution paid or payable by the employer, any retrenchment compensation, any commission payable.

### 3.6 Who is Entitled to Bonus?

Every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment-(i) for not less than thirty working days in that year, (ii) on a salary or wage not exceeding ₹ 10,000 per mensem. [Section 2(13) read with Section 8].-

The payment of Bonus Act does not make any distinction as to whether an employee is daily wager, temporary, permanent, weekly paid, monthly paid etc. the only precondition he should have worked in the establishment for not less than 30 working days in an accounting year. [Himachal Pradesh State Electricity Board and Others Vs Krishan Dutt 2010 (127) FLR 577(H.P.).]

If an employee is prevented from working and subsequently reinstated in service, employee's statutory liability for bonus cannot be said to have been lost. Nor can the employer refuse for such bonus. [*Project Manager, Ahmedabad Project, ONGC vs. Sham Kumar Sahegal* [1995] 1 LLJ 863 Guj].

An employee in the following cases is entitled to bonus:

- (i) A temporary workman is entitled to bonus on the basis of total number of days worked by him.
- (ii) An employee of a seasonal factory is entitled to proportionate bonus and not the minimum bonus as prescribed under Section 10 of the Act.
- (iii) A part time employee as a sweeper engaged on a regular basis is entitled to bonus. [*Automobile Karmachari Sangh vs. Industrial Tribunal* [1970] 38 FJR 268].
- (iv) A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period. [*East Asiatic Co. (P.) Ltd. vs. Industrial Tribunal* [1961] 1 LLJ 720].
- (v) A probationer is an employee and as such is entitled to bonus. [*Bank of Madurai Ltd. vs. Employees' Union*, 1970, Lab IC 1215].
- (vi) A dismissed employee reinstated with back wages is entitled to bonus. [*Gammon India Ltd. vs. Niranjan Das* [1984] 48 FLR 310].
- (vii) A piece-rated worker is entitled to bonus. [*Mathuradas Kanji vs. L.A. Tribunal AIR*, [1958], SC 899].
- (viii) Employees employed through contractors on building operations shall be entitled to bonus [The Payment of Bonus (Amendment) Act, 2007 w.e.f 1.04.2006]

An employee in the following cases is not entitled to bonus:

1. An apprentice is not entitled to bonus [*Wheel & RIM Co. vs. Government of T.N.* (1971) 2 LLJ 299; 40 FJR 18].
2. An employee who is dismissed from service on any ground of misconduct as mentioned in Section 9, is disqualified for any bonus and not merely for bonus of the accounting year in which he is dismissed (*Pandian Roadways Corporation Ltd. vs. Presiding Officer* [1996] 2 CLR 1175 (Mad))

Disqualification of Bonus (Section 9) An employee who has been dismissed from service for :-

- (a) fraud; or
  - (b) riotous or violent behaviour while on the premises of the establishment [V.G Textiles Private Ltd vs Assistant Commissioner of Labour, 2010 (3) LLN405 (Mad.)]; or
  - (c) theft, misappropriation or sabotage of any property of the establishment is not entitled for bonus.
3. Employees of certain establishments specified in section 32 are not covered by this Act.

### **3.7 Establishment to include Departments, Undertakings and Branches (Section 3)**

Where an establishment consists of departments or undertakings, or has branches irrespective of whether they are situated in the same place or in different place, all such

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departments or undertakings or branches are to be treated as part of the same establishment for the purpose of computation of bonus under this Act.

It has been provided that if, for any accounting year, a separate balance sheet and profit and loss account are prepared and maintained in respect of any such departments etc. then such department, undertaking or branch shall be treated as separate establishments for the purpose of calculation of bonus for that year, unless such department, etc., were, immediately prior to the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus.

#### 3.8 Computation of gross profits under Section 4 –

(a) The gross profit derived by an employer is required to be calculated in the manner specified in the first Schedule, in the case of a banking company; (b) in any other case, these gross profits are to be calculated in the manner specified in the Second Schedule.

FOR YOUR REFERENCE, THE ABOVE MENTIONED SCHEDULES ARE GIVEN BELOW:

#### 3.9 The First Schedule

[See Section 4(a)]

##### COMPUTATION OF GROSS PROFITS

Accounting Year ending-----

Item No.	Particulars	Amount of sub-items ₹	Amount of main items ₹	Remarks
*1.	Net profit as shown in the Profit and Loss Account after making usual and necessary provisions.	₹	₹	
2.	Add back provision for :			
	(a) Bonus to employees			
	(b) Depreciation.			
	(c) Development Rebate Reserve.			See foot-note (1)
	(d) Any other reserves.			
	Total of Item No. 2	₹		See foot-note (1)
3.	Add back also :			
	(a) Bonus paid to employees in respect of previous accounting years.			See foot-note (1)
	(b) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of -			
	(i) the amount, if any, paid to, or provided			



- for payment to, an approved gratuity fund; and
- (ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason.
- (c) Donation in excess of the amount admissible for income tax.
- (d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a *deduction* under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax). See foot-note (1)
- (e) Any amount certified by the Reserve Bank of India in terms of Section 34A (2) of the Banking Regulation Act, 1949.
- (f) Losses of, or expenditure relating to, any business situated outside India.
- Total of Item No. 3      ₹ \_\_\_\_\_
4. *Add also* income, profits or gains (if any) credited directly to published or disclosed reserves other than:
- (i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax).
- (ii) Profits of, and receipts relating to any business situated outside India;
- (iii) income of foreign banking companies from investment outside India.
- Net total of Item No. 4      ₹ \_\_\_\_\_
5. Total of Item Nos. 1, 2, 3, & 4      ₹ \_\_\_\_\_
6. Deduct:
- (a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income tax) See foot- note (2)
- (b) Profits of, and receipts relating to, any business situated outside India. See foot- note (2)
- (c) Income of foreign banking companies from investments outside India. See foot- note (2)
- (d) Expenditure or losses (if any) debited directly to published or disclosed *reserves*, other than-

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- (i) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax);
- (ii) losses of any business situated outside India.

(e) In the case of foreign banking companies proportionate administrative (overhead) expenses of Head Office allocable to Indian business. See foot-note (3)

(f) Refund of any excess direct tax paid for previous accounting years and excess provision, if any, of previous accounting year, relating to bonus, depreciation, or development rebate, if written back. See foot-note (2)

(g) Cash subsidy, if any, given by the Govt., or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes. See foot-note (2)

Total of Item No. 6

₹  
₹

7. Gross profits for purposes of bonus  
(Item No. 5 minus item No. 6).

*Explanation:* In sub-item (b) of Item 3, "approved gratuity fund" has the same meaning as assigned to it in clause (5) of Section 2 of the Income-tax Act.

#### Footnotes:

- (1) If, and to the extent, charged to Profit and Loss Account.
- (2) If, and to the extent, credited to Profit and Loss Account.
- (3) In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per consolidated Profit and Loss Account adjusted as in Item No. 2 above only).

### 3.10 The Second Schedule

[See Section 4(b)]

#### COMPUTATION OF GROSS PROFITS

*Accounting Year ending.....*

<i>Item No.</i>	<i>Particulars</i>	<i>Amount of sub-items</i>	<i>Amount of main items</i>	<i>Remarks</i>
		₹	₹	
1.	Net Profit as per Profit and Loss Account	₹	₹	
2.	<i>Add back</i> provision for:			
	(a) Bonus to employees.			
	(b) Depreciation.			
	(c) Direct Taxes, including the provision (if any) for previous accounting years.			
	(d) Development rebate/investment allowance / Development allowance reserve.			See foot-note (1)
	(e) Any other reserves.			See foot-note (1)
	Total of Item No. 2	₹		
3.	<i>Add back</i> also:			
	(a) Bonus paid to employees in respect of previous accounting year.			See foot-note (1)
	(aa) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of: (i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and (ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason.			
	(b) Donations in excess of the amount admissible for income tax.			
	(c) Any annuity due, or commuted value of any annuity paid under the provisions of Section 280-D of the Income Tax Act during the accounting year.			
	(d) Capital expenditure (other) than capital expenditure on scientific research which is allowed as a deduction under any law for the			See foot-note (1)

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time being in force relating to direct (taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax or agricultural Income-tax.)

- (e) Losses of, or expenditure relating to, any business situated outside India.

Total of Item No. 3

₹

4. *Add also* Income, Profits or gains (if any) credited directly to reserves, other than -

- (i) capital receipts and capital profits including profits on the sale of capital assets on which depreciation has not been allowed for income-tax/agricultural income-tax).  
(ii) profits of, and receipts relating to, any business situated outside India;  
(iii) income of foreign concerns from investments outside India.

Net total of Item No. 4

₹

5. Total of Item Nos. 1, 2, 3, & 4

₹

6. Deduct :

- (a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income tax) See foot-note (2)
- (b) Profits of, and receipts relating to any business situated outside India See Foot-note (2)
- (c) Income of foreign concerns from investments outside India. See foot-note (2)
- (d) Expenditure or losses, (if any), debited directly to reserves, other than-  
(i) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income tax);  
(ii) losses of any business situated outside India.
- (e) In the case of foreign concerns proportionate administrative (over-head) expenses of Head Office allocable to Indian business. See foot-note (3)

- (f) Refund of any direct tax paid See foot-note (2)  
for previous accounting years and  
excess provision, if any, of previous accounting years  
relating to bonus, depreciation, taxation or development  
rebate or development allowance, if written back.
- (g) Cash subsidy, if any, given by the Government / by any,  
body corporate established by any law for the  
time being in force or by any other agency through  
budgetary grants whether given directly or through any agency  
for specified purposes and the proceeds of which are reserved for such purposes.
- Total of Item No. 6 ₹ \_\_\_\_\_
7. Gross profit for purpose of bonus ₹ \_\_\_\_\_  
(item No. 5 minus item No. 6).

*Explanation:* In sub-item (aa) of Item 3, "approved gratuity fund" has the same meaning as assigned to it in clause (5) of Section 2 of the Income-tax Act.

#### Footnotes :

- (1) If, and to the extent, charged to Profit and Loss Account.
- (2) If, and to the extent, credited to Profit and Loss Account.
- (3) In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per consolidated Profit and Loss Account, (adjusted as in Item No. 2 above only).

### 3.11 A Prior deduction from gross profits (Section 6)

Having calculated the gross profits in terms of Section 4, the following sums shall be deducted from gross profit as prior charges:

- (a) **Depreciation:** Any amount by way of depreciation admissible under Section 32(1) of the Income Tax Act or under the provisions of the agriculture income tax law. If however, any employer has been paying bonus to his employees under a settlement or an award or agreement made before the promulgation of the Bonus Ordinance, *i.e.*, before 29 May, 1965, and subsisting on that date, after deducting from the "gross profit" notional normal depreciation, then, the amount of depreciation to be deducted as prior charge may continue to be such notional normal depreciation. This, however, is at the option of the employer who may choose either the normal depreciation or the depreciation admissible under the Bonus Act. This option has to be exercised only once and within one year from May 29, 1965.
- (b) **Development Rebate or Allowance:** Any amount by way of development rebate, or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income-tax Act.
- (c) **Direct Taxes:** Subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year.

- (d) **Return on Capital etc.:** Such further sums as are specified in respect of the employer in the Third Schedule. This schedule prescribes the categories of employer (company, banking company, corporations, cooperative society etc.) who are entitled for permissible deductions.

### 3.12 The Third Schedule

[See Section 6(d)]

<i>Item No.</i> (1)	<i>Category of employer</i> (2)	<i>Further Sums to be deducted</i> (3)
1	Company, other than a banking company	<p>(i) The dividends payable on its preference share capital for the accounting year calculated at the actual rate at which such dividends are payable;</p> <p>(ii) 8.5 per cent of its paid up equity share capital as at the commencement of the accounting year;</p> <p>(iii) 6 per cent of its reserves shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year:</p> <p>Provided that where the employer is a foreign company within the meaning of Section 591 of the Companies Act, 1956 (1 of 1956) the total amount to be deducted under this item shall be 8.5 per cent on the aggregate of the value of the net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities (other than any amount shown as payable by the company to its Head Office or otherwise or any interest paid by the company to its Head Office) in India.</p>
2	Banking company	<p>(i) The dividends payable on its Preference share capital for the accounting year calculated at the rate at which such dividends are payable;</p> <p>(ii) 7.5 per cent of its paid up equity share capital as at the commencement of the accounting year;</p> <p>(iii) 5 per cent of its reserves shown in its balance-sheet as at the commencement of the accounting year, including any profits carried forward from the previous</p>

		<p>accounting year;</p> <p>(iv) any sum which, in respect of the accounting year, is transferred by it-</p> <p>(a) to a reserve fund under Sub-section (1) of Section 17 of the Banking Regulation Act, 1949 (10 of 1949); or</p> <p>(b) to any reserves in India in pursuance of any direction or advice given by the Reserve Bank of India,</p> <p>whichever is higher:</p> <p>Provided that where the banking company is a foreign company within the meaning of Section 591 of the Companies Act, 1956 (1 of 1956), the amount to be deducted under this Item shall be the aggregate of-</p> <p>(i) the dividends payable to its preference shareholders for the accounting year at the rate at which such dividends are payable on such amount as bears the same proportion to its total preference share capital as its total working funds in India bear to its total world working funds;</p> <p>(ii) 7.5 per cent of such amount as bears the same proportion to its total paid up equity share capital as its total working funds in India bear to its total world working funds;</p> <p>(iii) 5 per cent of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total world working funds;</p> <p>(iv) any sum which in respect of the accounting year, is deposited by it with the Reserve Bank of India under sub-clause (ii) of clause (b) of Sub-section (2) of Section 11 of the Banking Regulation Act, 1949, not exceeding the amount required under the afore-said provision to be so deposited.</p>
3	Corporation	<p>(i) 8.5 per cent of its paid up capital as at the commencement of the accounting year;</p> <p>(ii) 6 per cent of its reserves, if any, shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year.</p>
4.	Co-operative society	<p>(i) 8.5 per cent of the capital invested by such</p>

		<p>society in its establishment as evidenced from its books of accounts at the commencement of the accounting year;</p> <p>(ii) such sum as has been carried forward in respect of the accounting year to a reserve fund under any law relating to co-operative societies for the time being in force.</p>
5	Any other employer not falling under any of the aforesaid categories:	<p>8.5 per cent of the capital invested by him in his establishment as evidenced from his books of accounts at the commencement of the accounting year; Provided that <b>where such employer is a person to whom Chapter XXII A of the Income-tax Act applies</b>, the annuity deposit payable by him under the provisions of that Chapter during the accounting year shall also be deducted:</p> <p>Provided further that <b>where such employer is a firm</b>, an amount equal to 25 per cent, of the gross profits derived by it from the establishment in respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of Section 6 by way of remuneration to all the partners taking part in the conduct of business of the establishment shall also be deducted, but where the partnership agreement, whether oral or written, provides for the payment of remuneration to any such partner, and-</p> <p>(i) the total remuneration payable to all such partners is less than the said 25 per cent, the amount payable, subject to a maximum of forty-eight thousand rupees to each such partner; or</p> <p>(ii) the total remuneration payable to all such partners, is higher than the said 25 per cent, such percentage, or a sum calculated at the rate of forty-eight thousand rupees to each such partner, whichever is less, shall be deducted under this proviso:</p> <p>Provided also that where such employer is an individual or a Hindu undivided family :</p> <p>(i) an amount equal to 25 per cent of the gross profits derived by such employer from the establishment in</p>



		respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of Section 6; or (ii) forty-eight thousand rupees, whichever is less by way of remuneration to such employer, shall also be deducted.
6	Any employer falling under Item No. 1 or Item No. 3, or Item No. 4 or Item No 5 and being a licensee within the meaning of the Electricity (Supply) Act, 1948 (54 of 1948).	In addition to the sums deductible under any of the aforesaid Items, such sums as are required to be appropriated by the licensee in respect of the accounting year to a reserve under the Sixth Schedule to that Act shall also be deducted.

*Explanation:* The expression "reserves" occurring in column (3) against Item Nos. 1(iii), 2(iii) and 3(ii) shall not include any amount set apart for the purpose of :

- (i) payment of any direct tax which, according to the balance sheet, would be payable;
  - (ii) meeting any depreciation admissible in accordance with the provisions of clause (a) of Section 6;
  - (iii) payment of dividends which have been declared,
- but shall include-
- (a) any amount, over and above the amount referred to in clause (i) of this *Explanation*, set apart as specific reserve for the purpose of payment of any direct tax; and
  - (b) any amount set apart for meeting any depreciation in excess of the amount admissible in accordance with the provisions of clause (a) of Section 6.

### 3.13 Available Surplus (Section 5)

According to Section 2(6), it means the available surplus Computed under Section 5. Accordingly, the available surplus in respect of any accounting year comprises of the gross profits for that year after deducting therefrom certain prior charges referred to in Section 6. Further an amount equal to the tax saved on the account of bonus in respect of the immediately preceding accounting year, should be added. It is obvious that an employer can claim the amount of bonus payable as deductible expense for the purpose of his tax assessments. Such saving must also be added to the amount of gross profits for the purpose of calculation of available surplus.

### 3.14 Calculation of Direct Tax Payable By The Employer (Section 7)

Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year.

In calculating the above mentioned tax, no account shall be taken on the following matters, namely:

- (i) **any loss incurred by the employer** in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
- (ii) **any arrears of depreciation** which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under Section 32(2) of the Income-tax Act;
- (iii) **any exemption conferred on the employer** under Section 84 of the Income Tax Act or of any deduction to which he is entitled under Section 101(1) of the Income-tax Act, as in force immediately before the commencement of the Finance Act, 1965.

Where the employer is a religious or a charitable institution to which the provisions Section 32 do not apply and the whole or any part of its income is exempt from tax under the Income Tax Act, then with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;

Where the employer is an Individual or a H.U.F. then the tax payable by such employer under the Income Tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;

Where the income of any employer includes any profits and gains derived from the export of any goods or merchandise and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then no account shall be taken of such rebate;

No account shall be taken of any rebate (other than development rebate or investment allowance or development allowance) or credit or relief or deduction (not herein before mentioned) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

### 3.15 Payment of Minimum Bonus (Section 10)

Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of every accounting year, a minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or ₹100 (**₹ 60 in case of employee below the age of 15 years**), whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

Even if the employer suffers losses during the accounting year he is bound to pay minimum bonus as prescribed by Section 10. This Act creates a statutory right in the employees to get minimum bonus and also creates a statutory liability upon the employers covered by the Act to pay minimum bonus. [*State vs. Sardar Dalip Singh Majithia, 1979, Lab. I.C. (913) (Al)*].

### 3.16 Payment of Maximum Bonus (Section 11)

Where, in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during

the accounting year subject to a maximum of 20% of such salary or wage.

In computing the allocable surplus under the above-mentioned provision, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provision of that section.

### 3.17 Calculation of Bonus with respect to certain Employees (Section 12)

Where the salary or wage of an employee exceeds ₹3,500 per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under Section 11, shall be calculated as if his salary or wage were only ₹ 3,500 per mensem [The Payment of Bonus (Amendment) Act, 2007 w.e.f from 1.04.2006]

### 3.18 Procedure for Calculation of Working Days and Proportionate Reduction in Bonus

Section 14 of the Act provides how to compute the number of working days for purposes of Section 13. Section 13 in turn prescribes a scale whereby bonus can be proportionately reduced in certain cases. Under Section 14, following days shall be deemed to be the working days of an employee and shall be counted while calculating the total working days on which he has been on work for the purpose of bonus:

- (i) day when he has been laid off under an agreement or by a standing order under Industrial Employment (standing orders) Act, 1946 or Industrial Disputes Act, 1947 or any other law applicable to the establishment
- (ii) he has been on leave with salary or wage.
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, and
- (iv) the employee has been on maternity leave with salary or wages during the accounting year.

As per Section 13, where an employee has not worked for all the working days in an accounting year, the minimum bonus of ₹ 100 or, as the case may be of ₹ 60, if such bonus is higher than 8.33% of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.

Suppose X is an employee with the wages of ₹ 80 per month. Here X is entitled to receive ₹ 100 as bonus for the accounting year. If however, X has worked only for half the number of the working days, there X is entitled only for half the number of working days i.e., ₹ 50 only as bonus.

**Exceptions: 1.** Both Sections 13 and 14 do not cover a case where an employee is prevented from working by reason of an illegal order of termination. If an employee by himself and on his violation does not work on all the working days in an accounting year, then the formula prescribed in Section 13 read with section 14 has to be applied. But where an employee was ready and willing to work, but for reasons beyond his control was unable to work and gain the eligibility for bonus under Section 8 of the Act, it cannot be said that Section 14 is a bar for such a claim.

2. The section 13 as to proportionate reduction in bonus shall not apply on the employee of seasonal factory. Here the word 'working days in any accounting year' mean those days of the year during which the employee concerned is actually allowed to work [Sakhkar Mills Mazdoor Sangh V. Gwalior Sugar Co. Ltd.(1985) 2SCC 134]

### 3.19 Set On and Set Off of Allocable Surplus (Section 15)

The scheme of providing minimum and maximum bonus is based on the device of the set-on and set-off of the allocable surplus of a particular year. The amount of set-on and set-off has to be taken into account for the payment of bonus with the allocable surplus. The available allocable surplus for the relevant accounting year has to be arrived at after taking into account the figures of set-on and set-off in the previous year.

Following is the method of set-off of available surplus:

(1) Where for any accounting year, **the allocable surplus exceeds the amount of maximum bonus** payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of 20% of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the 4th accounting year. This excess is to be utilised for the purpose of payment of bonus, in the manner illustrated in the Fourth Schedule.[Section 15(1)]

(2) There may be a case **where there is no available surplus or where the allocable surplus in respect of that year falls short of the amount of minimum bonus** payable to the employee in the establishment under Section 10 and there is no amount or sufficient amount carried forward and set on under Section 15(1) which could be utilised for the purpose of payment of minimum bonus. In such a situation minimum amount or the deficiency as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on in the manner illustrated in the Fourth Schedule. .[Section 15(2)]

(3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by Sub-section (1) or (2) for the purpose of payment of bonus under this Act [Section 15(3)].

(4) Where in any accounting year any amount has been carried forward and set on or set off under this Section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account [Section 15(4)].

### 3.20 The Fourth Schedule

(See Sections 15 and 16)

In this Schedule, the total amount of bonus equal to 8.33 per cent, or the annual salary or wage payable to all the employees is assumed to be ₹ 1,04,167. Accordingly, the maximum bonus to which all the employees are entitled to be paid (twenty per cent of the annual salary or wage of all the employees) would be ₹ 2,50,000.

<i>Year</i>	<i>Amount equal to sixty per cent or sixty-seven per cent, as the case may be, or available surplus allocable as bonus</i>	<i>Amount payable as bonus</i>	<i>Set on or set off of the year carried forward</i>	<i>Total set on or set off carried forward</i>
(1)	(2)	(3)	(4)	(5)
of (Year)				
1.	1,04,167	1,04,167**	Nil	Nil
2.	6,35,000	2,50,000*	Set on 2,50,000*	Set on 2,50,000(2)
3.	2,20,000	2,50,000* (inclusive of 30,000 from year-2)	Nil	Set on 2,20,000(2)
4.	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000(2) 1,25,000(4)
5.	1,40,000	2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000(2) 1,25,000(4)
6.	3,10,000	2,50,000*	Set on 60,000	Set on Nil+(2) 1,25,000(4) 60,000(6)
7.	1,00,000	2,50,000*(inclusive of 1,25,000 from year-4 and 25,000 from year-6)	Nil	Set on 35,000(6)
8.	Nil (due to loss)	1,04,167** (inclusive of 35,000 from year-6)	Set off 69,167	Set off 69,167(8)
9.	10,000	1,04,167**	Set off 94,167	Set off 69,167(8) 94,167(9)
10.	2,15,000	1,04,167**(after setting off 69,167 from year-8 and 41,666 from year-9)	Nil	Set off 52,501(9)

Notes:- \* Maximum  
+ the balance of ₹1,10,000 set on from year-2 lapses.  
\*\* Minimum

### **3.21 Special Provision with Respect to Certain Establishments (Section 16)**

Where an establishment is newly set up, the employees of such an establishment shall be entitled to be paid bonus in accordance with the provisions of Sub-sections (1A), (1B) and (1C) discussed below [Sub-section (1)]. It may be noted that an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management, name or ownership.

According to these Sub-sections, the liability for paying bonus in a newly set up establishment has to be judged with reference to different accounting years:

(i) The first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment [Sec16(1A)]. Bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment. For calculation of bonus the provisions of the Act (but not Section 15) shall apply in relation to that year.

It may be noted that an employer shall not be deemed to have derived profit in any accounting year unless: (a) he has made provision for that year's depreciation to which he is entitled under the Income Tax Act, 1961 or, as the case may be, under the agricultural Income Tax law; and (b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

(ii) In the sixth and seventh accounting year, the provisions of Section 15 shall apply subject to the following modifications, namely: (i) for the sixth accounting year, set on or set off (as the case may be) shall be made in the manner illustrated in the Fourth Schedule, taking into account the excess or deficiency (if any, as the case may be) of the allocable surplus set on or set off in respect of the 5th and 6th accounting years; (ii) for the 7th accounting year, the same principle is to be followed but the excess or deficiency of the allocable surplus set on or set off in respect of the 5th, 6th and 7th accounting years has to be taken into account [Sub-section (1B)].

From the 8th accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of Section 15, shall apply in relation to such establishment as they apply in relation to any other establishment [Sub-section (1C)].

For the purpose of Sub-sections (1A), (1B) and (1C), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or any oil-field shall not be taken into consideration. Where any question arises with regard to such production or manufacture, the decision of the Appropriate Government made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any Court or other authority.

### **3.22 Miscellaneous**

A. Adjustment of customary or interim bonus against bonus payable under the Act (Section 17): (i) If in any accounting year, an employer has paid any puja bonus or other

customary bonus to any employee, then the former shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year. The employee shall be entitled to receive only the balance.

(ii) The employer can do the same thing even in a case where he has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable.

**B. Deduction of certain amounts (in the case of misconduct) from bonus payable under the Act ((Section 18):** where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then the employer can lawfully deduct the amount of loss from the amount of bonus payable by him to the employee in respect of that accounting year only. In this case, the employee shall get only the balance, if there be any.

**C. Time-Limit for payment of bonus (Section 19):** All amounts payable to an employee by way of bonus shall be paid by the employer within a period of 8 months from the closing of the accounting year. But this period of 8 months may be extended up to a maximum of 2 years by the appropriate Government or by any authority specified by the appropriate Government. This extension is to be granted on the application of the employer and only for sufficient reasons.

But where there is a dispute regarding the payment of bonus pending before any authority the same must be paid within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of a dispute mentioned under Section 22.

**D. Recovery of the bonus due from an employer (Section 21):** It may so happen that an amount of bonus is due to an employee from his employer under a settlement or an award or agreement and it is not paid. In such a case following procedure may be followed to recover the due bonus:

(i) the employee may **make an application** for the recovery of the amount due to him to the appropriate Government.

(ii) The **application can be made by** any other person authorized by the employee in writing to act on his behalf. It can be made even by his assignee or heirs when the employee is dead.

(iii) The **application is to be made within one year** from the date on which the money(bonus) became due but it may be entertained even after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(iv) On receipt of the aforesaid application for the recovery of the bonus amount, if the appropriate Government or such authority as it may specify in this connection is satisfied that the money is so due, it shall issue a certificate for that amount to the Collector.

(v) Thereupon, Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

According to the Explanation to Section 21, "employee" (mentioned in Sections 21, 22, 23, 24 and 25) includes a person who is entitled to the payment of bonus under this Act but, who is no longer in employment.

**E. Disputes (Section 22):** Disputes may arise between an employer and his employees either regarding bonus payable under this Act or regarding the application of this Act to an

establishment in public sector. Such a dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 or any corresponding law relating to investigation and settlement of Industrial disputes in force in State and the provisions of that Act or as the case may be such law shall, save as otherwise expressly provided, apply accordingly.

**F. Presumption about the accuracy of balance sheet and profit and loss account of corporations and companies (Section 23):** (i) **Authority to presume audited accounts to be accurate:** During the course of that proceeding before any arbitrator or Tribunal under the Industrial Disputes Act or under any corresponding law relating to investigation and settlement of industrial disputes in force in a State to which any dispute of the nature specified in section 22 has been referred,, the balance sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), duly audited by the Comptroller and Auditor General of India, or by auditors duly qualified to act as auditors of companies under Section 226(1) of the Companies Act, 1956, are produced before it, then, the above mentioned authority may presume that those are accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode.

(ii) **Steps to find out the accuracy:** where if the State is satisfied that those statements are not accurate, it may take such steps as it thinks necessary to find out the accuracy thereof.

(iii) **Clarification by union:** Situation may demand a clarification relating to any item in the balance sheet or the profit and loss account. In such a situation, where trade union or the employees who are a party to the dispute, may make an application to the authority requiring any clarification relating to any item in the balance sheet or profit and loss account from the employer, company or corporation. The authority shall then satisfy itself as to the necessity of such clarification., It shall direct the corporation or the company to furnish such clarification to the trade union or the employees within a specified time limit. Thereupon, the company or the corporation must comply with such direction of the authority. [Section 23(2)].

**G. Audit of accounts of banking companies not be questioned (Section 24) :** Where any dispute of the nature specified in Section 22 between an employer, being a banking company, and its employees has been referred to the said authority under that Section and during the course of proceedings the accounts of the banking company duly audited are produced before it, the said authority shall not permit any trade union or employees to question the correctness of such accounts; But the trade union or the employees may be permitted to obtain from the banking company such information as is necessary for verifying the amount of bonus under this Act [Sub-section(1)].

These provisions shall not enable the trade union or the employees to obtain any information which the banking company is not compelled to furnish under Section 34A of the Banking Regulation Act, 1949 [Sub-section (2)].

**H. Audit of accounts of employers not being corporation or companies (Section 25):** If the employer has any dispute relating to the payment of bonus under this Act or with respect to the applicability of this Act to an establishment in the public sector with his employees and the accounts of such employer are audited by an auditor duly qualified to act as auditor of companies under Section 141 of the Companies Act, 2013 and such accounts are produced



before the authority then the provisions of Section 23 shall so far as may be, apply to the accounts so audited [Section 25(1)]

But if the authority finds that the accounts of such employer have not been audited by any such auditor duly qualified to act under Section 141 of the Companies Act, 2013 it can, if it think necessary to do so ask the employer to get his accounts audited within the stipulated time. Thereupon, the employer must get his accounts audited within the stipulated time. If the employer fails to do so, then the said authority may get the accounts audited by such auditor or auditors as it thinks fit. The accounts thus audited, whether by the employer or on his default by the authority, shall fall within the provisions of Section 23.

**I. Maintenance of registers, records etc. (Section 26):** Every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may be prescribed.

*Rule 4 of the Payment of Bonus Rules, 1965* prescribes three kinds of registers to be maintained by the employers, viz., (i) Register in Form A (appended to the rules) showing the computation of the allocable surplus referred to in Section 2(4); (ii) Register in Form B showing the set on and set-off of the allocable surplus (under Section 15); (iii) Register in Form C showing the details of the amount of bonus due to each of the employees, the deductions under Sections 17 and 18 and the amount actually disbursed to the employees.

**J. Inspectors (Section 27): Appointment and the limit of jurisdiction:** The appropriate Government may, by notification in the Official Gazette, appoint such persons as he thinks fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

**Powers:** An inspector thus appointed has to ascertain whether any of the provisions of this Act has been complied with. And for this purpose, he may following powers:

- (i) require an employer to furnish such information as he may consider necessary;
- (ii) at any reasonable time and with such assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require anyone found in charge thereof to produce before him for examination any account books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment;
- (iii) examine with respect to any matter relevant to any of the purpose aforesaid, the employer, his agent or servant or any other person whom the inspector has reasonable cause to believe to be or to have been an employee in the establishment;
- (iv) make copies of or take extracts from, any book, register or other document maintained in relation to the establishment;
- (v) exercise such other powers as may be prescribed.

**Position of the Inspector:** The Inspector appointed as aforesaid is deemed to be a public servant within the meaning of the Indian Penal Code.

**Duty to produce account book, register and other document-** Any person whom an Inspector calls upon to produce any account book, register or other document or to give information, shall be legally bound to do so.

**Limitation of power:** The provisions of Section 27 do not empower an Inspector to require a banking company to furnish or disclose any statement or information or to produce or give inspection of, any of its books of accounts or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under Section 34A of the Banking Regulation Act, 1949.

**K. Penalty (Section 28):** A person shall be liable to punishment: (i) if he contravenes any of the provisions of this Act or any rule framed thereunder; or (ii) if he fails to comply with any direction or requisition which may have been given or made to him under this Act. The punishment may be imprisonment for a term extending up to 6 months or of fine extending up to ₹1000 or both.

**L. Offences by Companies (Section 29): Liabilities of persons:** If an offence under this Act is committed by a Company, then every person who, at the time of committing the offence was in charge of and responsible to the company for the conduct of its business, shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly.

**Exemption:** Any such person who is liable for punishment, shall be exonerated from liabilities and incidental punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

**Punishment where the liability is proved:** , where an offence has been committed by a company and it is proved that the offence has been committed by a company with the consent and connivance of, or is attributable to any neglect on the part of any director ('director' in relation to a firm means a partner in the firm), manager, secretary, or other officer of the company (meaning any body corporate and including a firm or other association of individuals), such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**M. Cognizance of offences (Section 30) :** No Court shall take cognizance of any offence which means any act or omission made punishable by any law for the time being in force [vide Section 3(38) of the General Clauses Act] punishable under this Act, except on the:

- (i) complaint made by or under authority of the appropriate Government, or
- (ii) an officer of the Government (not below the rank of a Regional Labour Commissioner in the case of an officer of the Central Government, and not below the rank of a Labour Commissioner in the case of an officer of the State Government) specially authorised in this behalf by that Government.

**Jurisdiction of court:** No Court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

Thus it is evident that Section 30 makes it obligatory, on every Court before it takes cognizance of a complaint against any person for an offence under this Act that the necessary sanction is obtained or complaint is made under the authority of the appropriate Government or specified officer of the Central Government or the State Government.

**N. Protection of an action taken under the Act (Section 31):** No suit, prosecution or other legal proceedings shall be taken against the Government or any officer of the Government for anything which is:

- (i) done in good faith, or
- (ii) intended to be done in pursuance of this Act, or
- (iii) any rule made thereunder.

### 3.23 Special Provision with respect to Bonus Linked with Production or Productivity (Section 31A)

There may be an agreement or settlement by the employees with their employer for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, as is payable under the Payment of Bonus Act. Section 31A of the Payment of Bonus Act, inserted by the Amendment Act, 1976, allows such an agreement/settlement made either before or after the commencement of this Amendment Act, 1976. Accordingly, when such an agreement has been entered into the employees are entitled to receive bonus as per terms of the agreement/settlement, subject to the following restrictions imposed by Section 31A :

- a. **Agreement to relinquish minimum bonus:** any such agreement/settlement whereby the employees relinquish their right to receive minimum bonus under Section 10, shall be null and void in so far as it purports to deprive the employees of the right of receiving minimum bonus.
- b. **Maximum bonus not exceeding 20%:** if the bonus payable under such agreement exceeds 20% of the salary/wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of salary/wages.

### 3.24 Effect of laws and agreements inconsistent with the Act (Section 34) :

Subject to the provisions of Section 31A, the provision of the Act shall have effect notwithstanding inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement or contract of service.

### 3.25 Saving (Section 35):

Nothing contained in this Act shall be deemed to affect the provisions of the Coal Mines Provident Fund, Family Pension and Bonus Scheme Act, 1948 (46 of 1948) or of any scheme made thereunder.

### 3.26 Power of Exemption (Section 36)

Though the Act creates liability on the part of employer to pay the minimum bonus and confers a right to the workmen, as mentioned in Section 10, the obligation and right is subject to exemption under Section 36. The appropriate Government may, having regard to the financial position and other relevant circumstances of an establishment or class of establishment, exempt by notification in the official Gazette, such establishment or class of establishments from all or any provision of the Payment of Bonus Act. It may do so if it is of opinion that it will

not be in public interest to apply all or any of the provision of this Act to such establishment or class of establishment. It may exempt such establishment or class of establishment from the application of the provision of this Act for such period as may be specified in the notification and impose such conditions as it may think fit to impose

There are two stages in Section 36.

- (1) The Government shall consider the financial position and other relevant circumstances of an establishment or class of establishment.
- (2) It should be of the opinion that it would not be in the public interest to apply all or any of the provisions of the Act.

The expression 'financial position' include loss suffered by the establishment during the accounting year. The expression 'other relevant circumstances' will include every consideration as to whether the workmen had principally contributed to the financial loss of the company during that accounting year.

If the bonus liability is negligible compared to loss suffered, company should not be relieved of liability to pay minimum bonus.

If the losses sustained by the employer is not due to any misconduct on the part of employees, the employer is liable to pay statutory minimum bonus. [*J.K. Chemicals Ltd. vs. Govt. of Maharashtra* (1996) *Bombay H.C.*].

### 3.27 Power to make Rules (Section 38)

The Central Government may make rules for the purpose of carrying into effect the provisions of this Act. In particular, and without prejudice to the generality to the said rule-making power, such rules may provide for:

- (i) the authority for granting permission under the proviso to Section 2(1) (iii) relating to "accounting year",
- (ii) the preparation of registers, records and other documents and the form and manner in which such registers, records and documents may be maintained under Section 26;
- (iii) the powers which may be exercised by an Inspector under Section 27(2)(e);
- (iv) any other matter which is to be, or may be, prescribed.

Every rule thus made has to be laid before each House of Parliament while it is in session for a total period of 30 days, which may be comprised in one session or in two or more successive sessions. If before the expiry of the session immediately following the session or the successive sessions aforesaid, both House agree in making any modification in the rule, the modified version of the rule shall be operative; but if both Houses agree that the rule should not be made, it will not be operative. Such modification, or as the case may be annulment shall be without prejudice to the validity of anything previously done under that rule. In other words, any previously done act under that rule will remain unaffected by the said modification or annulment.

### 3.28 Application of certain Laws not Barred (Section 39)

Save as otherwise expressly provided the provisions of this Act shall be in addition to and not in derogation of the Industrial Disputes Act, or any corresponding law relating to and settlement of industrial disputes in force in a State. This means investigation that the application of certain relevant laws is not excluded.

#### Key Points:

- ◆ Every employee shall be entitled to be paid bonus by his employer in an accounting year, provided he has worked in the establishment for not less than 30 working days in that year. Where an employee may not have worked for all the working days in an accounting year, there the minimum bonus of ₹ 100 or 60 shall be proportionately reduced if such bonus is higher than 8.33% of his salary/wage for the days he has worked in that accounting year.
  - ◆ Employees are eligible to receive bonus when he draws wage or salary upto ₹ 10,000 per month. For calculation purpose ₹ 3500 per month maximum will be taken.
  - ◆ Every employer shall be bound to pay the minimum bonus in respect to every accounting year which shall be 8.33% of the salary/wage of an employee or ₹ 100/- (₹ 60 in case of employee below 15 years), whichever is higher.
  - ◆ Where an allocable surplus of any accounting year exceeds the amount of minimum bonus, there in such case, the employer shall pay to every employee the bonus which shall be an amount in proportion to the salary or wage of an employee during the accounting year subject to a maximum of 20% , of such salary/wage.
  - ◆ An employee is disqualified from receiving bonus, if he is dismissed from service on the ground of fraud, riotous/violent behavior on the premises of the establishment, theft, misappropriation or sabotage of any property of the establishment.
  - ◆ An employer is entitled to deduct the following sums paid by him from the amount of bonus payable to an employee in respect of an accounting year- the amount paid as pooja bonus/other customary bonus and the amount paid to an employee as a part of bonus before the date on which such bonus becomes payable for the accounting year.
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- ◆ Where an employee is found guilty of misconduct causing financial loss to the employer in an accounting year, There in such a case employer can deduct the amount of loss from amount of bonus payable to an employee in respect to that accounting year in which loss was caused.
  - ◆ The bonus shall be paid by an employer within a period of eight months from the date of closure of the accounting year, however this time may be extended by the Government which shall not more than 2 years.
  - ◆ The manner of computing the gross profit derived by banking company is specified in the First Schedule of the Act.

### 3.30 Business Law, Ethics and Communication

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- ◆ The manner of computing the gross profit derived by Non-banking establishments (including companies which are non-banking entities) is specified in the Second Schedule of the Act.
- ◆ In computing the allocable surplus the amount of set on or set off shall be taken in to account according to the provision of the Act.
- ◆ The act also made provision which enable the employees and employer to enter in to an agreement for payment of Bonus based on production or productivity rather than profit.
- ◆ The Act exempted certain type of employees from the provisions of the Payment of Bonus Act.
- ◆ In certain circumstances, the appropriate Government can exempt an establishment from all or any of the provisions of the Act.